

**The Solar Community of No Name Key**  
**1934 No Name Drive**  
**No Name Key, Florida 33043**

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07/07/2008

Re: Text Amendment to MCC Section 9.5-258 and a Comprehensive Plan Amendment to Policy 102.8.5 to allow the provision of wastewater services to properties located within the federally designated Coastal Barrier Resources unit FL-50 on No Name Key, Florida. These amendments are scheduled to go before the DRC and Planning Commission on July 22 and 23, 2008, respectively.

Dear Andrew Trivette, Townsley Schwab, Mitchell Harvey, Joseph Haberman & Kathy Grasser:

The Solar Community of No Name Key, formerly known as the No Name Key Property Owners Against Commercial Power, was founded in 1995 in response to efforts to extend commercial electricity to No Name Key. Our current membership, which is listed below, represents 15 of the 43 homes on No Name Key. Some of the remaining households remain neutral on the issue.

The attached documents will show Monroe County's has maintained a consistent position on the issue of extending commercial power to No Name Key since 1996 and we thank you. Your position has been based on sound planning decisions, each of which was founded in the language of the Year 2010 Comprehensive Plan, Chapter 163 and Chapter 380 of the Florida Statutes.

We fought, along side of Monroe County, with all parties expending an incredible amount of time, energy and money to keep No Name Key from loosing what makes it distinct from every other island in the Florida Keys. Below is an overview of the Electrification of No Name Key battle from 1996 to 2003.

Our core beliefs and the County's historical position is eloquently stated in portions of the Planning Commission Resolution P17-99 Conclusions of Law:

*"All of the Appellants [Taxpayers for the Electrification of No Name Key] moved to No Name Key with the knowledge that commercially provided electricity was not available. These property owners have the ability to move elsewhere in the Florida Keys in order to have such a service provided to them. In contrast, other No Name Key property owners moved to the island expressly because of the lifestyle that is offered to them there, including the fact that the character of the island is unique, in part due to the lack of commercial power and is a special enclave in the Florida Keys that provides a unique quality of life than must be nurtured, protected and prolonged."*

There is no justification for these two proposed amendments to the Monroe County Code or Year 2010 Comprehensive Plan to go before the Development Review Committee and the Planning Commission.

On April 16, 2008, at the Regular Meeting in Key Largo, the BOCC discussed the direction to Staff to include No Name Key into the Lower Keys Regional wastewater facility design plans. Staff was directed to review this matter, include a feasibility analysis of the STEP/STEG technology, and report back to the BOCC. To date, no report has been brought back to the BOCC.

On May 21, 2008, at the regular meeting in Key Largo, the BOCC discussed providing central sanitary wastewater service to the property owners of No Name Key through inclusion in the Lower Keys Service Area wastewater treatment and collection system; and, voted to start the procedure to put No Name Key back into the "Hot Spot Designation."

No Name Key was never classified as a wastewater "Hot Spot". The documents suggesting otherwise, which were presented to the BOCC by the public, were two pages of a five-page table, "Table 5: Florida Keys Water Quality Hot Spots." The three missing pages of "Table 5" indicate that No Name Key was not included in the final water quality "Hot Spot" list generated on April 16, 1996 by the interagency workshop sponsored by SFWMD. To date, no report has been brought back to the BOCC regarding this direction.

On June 16, 2008, at the regular meeting in Marathon, the BOCC discussed providing central sanitary wastewater service to properties on No Name Key that lie within the federally designated Coastal Barrier Resources unit FL-50; and voted to amend the Code and the Comp Plan to lift the prohibition of the establishment of central wastewater treatment collection systems and utilities for No Name Key.

We still do not know the answer to the basic question: "what wastewater treatment options exist to bring the 44 homes of No Name Key into compliance with the 2010 Wastewater mandate?" No data has been collected to answer this fundamental question. No report has been brought back to the BOCC regarding the feasibility of a STEP/STEG wastewater collection system for the 44 EDUs on No Name Key. No report has been brought back to the BOCC regarding the appropriate designation of No Name Key as a "Cold Spot". Staff has not had time to follow through on any of these previous directions by the Board.

Yet, staff is being asked to move forward with changes to the Monroe County Code and the Year 2010 Comprehensive Plan that will have far-reaching unintended negative consequences on the County's ability to manage future growth in the Florida Keys. This is wrong and should not be done. It is especially wrong to be done in a vacuum devoid of staff-generated facts and the competent objective analysis required by state statutes.

As the attached documents demonstrate, there is a long-standing legal basis for not adopting the two currently proposed amendments. And, as you are aware amendment to the Monroe County Code or the Year 2010 Plan that are not based on substantial data and competent analysis are illegal. Amendment of the Monroe County Code and Year 2010 Comprehensive Plan must be consistent with the overall intent of the Goals, Objectives and Policies of the Year 2010 Comprehensive Plan, Chapter 163 and Chapter 380 Florida Statutes.

We ask that any action on the part of the Division of Growth Management and/or the Department of Planning and Environmental Resources be suspended until such time that the required objective data is collected and appropriately analyzed by planning staff.

We further ask that each of you please take time to read the brief history of the Electrification of No Name Key battle included below, along with the attached documents generated by your Departments. Thank you.

Sincerely,

Alicia Roemmele-Putney, President  
Carol C. Barber, Vice-President  
Elizabeth Harlacher, Secretary  
Fraklin Atwell, Treasurer

cc: Attorney Bob Shillinger, Monroe County  
Rebecca Jetton, DCA, Tallahassee, Florida  
Anne Morkill, National Key Deer Refuge, Big Pine Key, Florida  
Attorney Richard Grosso, Ft. Lauderdale, Florida

### **The Electrification of No Name Key Battle from 1996 to 2003: A Brief History**

On **August 2, 1996** County Administrator James Roberts advised Dale Finigin, City Electric Systems, that the Monroe County Year 2010 Comprehensive Plan has policies that are clearly not in support of an extension of electric service to No Name Key. [See attached Finigan-Roberts.pdf]

In a **May 13, 1998** Letter of Understanding from Tim McGarry, Director of Planning to Taxpayers for the Electrification of No Name Key, Inc., he stated that Monroe County "cannot support a project to extend commercial power to No Name Key because it would be inconsistent with Monroe County's Year 2010 Plan and both Chapters 380 and 163 of the Florida Statutes." [See attached "LOU McGarry.pdf"]

This decision was appealed to the Planning Commission where every conceivable argument imaginable was brought forward and heard by the Planning Commission during two lengthy quasi-judicial hearings in 1998 and 1999. The Applicants stated they had raccoons entering their homes, could not keep ice cream, were exposed to dengue fever, could not sell their homes, were lied to by the Realtors, had to run generators and store fuel and old batteries -- all of which are bad for the environment. The appeal was denied. [See attached Admin Appeal.pdf]

The Planning Commission, on **February 3, 1999**, upheld the Planning Director's interpretation of the Year 2010 Comprehensive Plan. Major points in the Commission's Conclusions of Law were: that the appellants failed to meet the required burden of proof, that No Name Key has always been provided special protection under the County's Comp Plans (plural), and that allowing commercial electricity would be inconsistent with the overall goals, objectives and policies of the Year 2010 Plan. Moreover all of the reasons the appellants gave regarding potential negative environmental impacts and potential health and safety concerns are a direct result of the appellant's choice for generated power rather than solar power. All of the appellants moved to No Name Key with the knowledge commercial electricity was not available. Appellants could move anywhere else in the Florida Keys to have commercial power, whereas those who have successfully adapted to solar living have no such choice.

After the Planning Commission's denial of the Administrative Appeal by Taxpayers for the Electrification of No Name Key, Inc., the Planning Department paid for two Photovoltaic experts to come down from Central Florida and host a two-day seminar on Big Pine Key that offered free technical assistance on how to utilize solar power effectively, on-site advice and information on grants. Only one member of Taxpayers for the Electrification, Inc. of No Name Key bothered to attend the workshops.

Instead of appealing the Planning Commission's denial to DOAH, the Taxpayers for the Electrification of No Name Key, Inc. filed a Complaint against Monroe County and City Electric Systems of Key West in the Circuit Court of the 16<sup>th</sup> Judicial Circuit on **July 2, 1999**. [Case Number: CAK990000819] The plaintiff represented 12 homes on No Name Key.

As a means of settling the pending suit, Plaintiffs once again sought relief through a Comprehensive Plan amendment to allow electrification of No Name Key. This time, on **December 21, 1999**, Planning Director Marlene Conaway determined "there are simply too many policies in the [Year 2010] Comprehensive Plan which would be in conflict with an amendment of this nature." [See attached Conaway-Amend.pdf]

In a second attempt to settle the pending suit, Plaintiffs proposed a Settlement Agreement that would have allowed the extension of commercial power to No Name Key. On **April 19, 2001** the BOCC unanimously rejected the proposed settlement agreement. Motion was made by Commissioner Williams, seconded by Commissioner Spehar, and supported by Commissioners Nelson, Nugent and McCoy. Also on April 19, 2001, motion was made by Commissioner Spehar and seconded by Commissioner Williams "directing staff to bring back to the Board for approval the **creation of a zoning overlay district designation of off-grid encompassing all properties within the boundaries of No Name Key**; and also, to address or change the other issues that clearly caused confusion today." This is the exact legislation, Monroe County Code Section 9.5-268 Coastal Barrier Resources System Overlay District of the Monroe County you are being asked to amend with this agenda item.

By the time Judge Richard Payne granted Summary Judgment in favor of the Defendants on **July 16, 2002**, over ninety-seven (97) entries had been made on the docket. On **August 19, 2002**, Taxpayers for the Electrification of No Name Key, Inc. appealed Judge Payne's ruling to the Third District Court of Appeals. After nearly a year of inaction, the Taxpayers for the Electrification of No Name Key, Inc. requested voluntary dismissal of their suit, which the court recognized on **June 24, 2003**.

#### **The Solar Community of No Name Key- Membership List- July 2008**

1. Atwell, Frank & Kimi;  
2137 Bahia Shores Road;  
No Name Key; 872-3495  
[arknarf@cs.com](mailto:arknarf@cs.com)  
[arknarf@bellsouth.net](mailto:arknarf@bellsouth.net)
2. Barber, Rob & Chris  
1934 No Name Drive  
No Name Key, FL 33043  
(305) 872-1401  
[ffnowhera@bellsouth.net](mailto:ffnowhera@bellsouth.net)
3. Brouillette, Jason  
1843 Bahia Shores Road  
No Name Key, FL 33043  
(305) 872-0283  
[Troa9@aol.com](mailto:Troa9@aol.com)
4. Brouillette, Wayne & Christie  
2107 Bahia Shores Road, NNK  
328 Kings Crest Lane  
Pelham, AL 35124  
[wbrou@uab.edu](mailto:wbrou@uab.edu)

5. Daniels, Faye & Garrison, Stuart  
20 Spanish Channel Drive  
No Name Key, FL 33043  
(305) 872-0589
6. Douville, Hallett & Linda  
32340 Cat Lane  
No Name Key, FL 33043  
(305) 872-2055  
[Douville@bellsouth.net](mailto:Douville@bellsouth.net)
7. Dry, Larry & Wanda  
1868 No Name Drive  
No Name Key, FL 33043  
(305) 872-1953  
[drdrytn@aol.com](mailto:drdrytn@aol.com)  
[wonding@aol.com](mailto:wonding@aol.com)
8. Gato, Jeannette  
1909 Bahia Shores Road  
No Name Key, FL 33043  
(305) 864-0945  
[Jfgato@msn.com](mailto:Jfgato@msn.com)
9. Harlacher, Tony & Liz  
1921 Bahia Shores Road  
No Name Key, FL 33043  
(305) 872-0644  
(570) 424-737  
[twoturtlestandl@bellsouth.com](mailto:twoturtlestandl@bellsouth.com)
10. Press, Michael & Ann  
Spanish Channel Drive  
No Name Key, FL 33043  
(305) 872-7550  
(321) 213-2654  
[michaelpress@hotmail.com](mailto:michaelpress@hotmail.com)
11. Putney, Mick & Alicia  
2150 No Name Drive  
No Name Key, FL  
(305) 872-8888  
[micalnnk@aol.com](mailto:micalnnk@aol.com)
12. Scanlon, Bob & Jan  
1845 No Name Drive  
No Name Key, FL 33043  
(305) 872-8845  
[thescanlons@hotmail.com](mailto:thescanlons@hotmail.com)

13. Wernsen, Hans & Corry  
1910 No Name Drive  
No Name Key, FL 33043  
(305) 872-3141  
[hamericor@aol.com](mailto:hamericor@aol.com)
14. Witter, Tom & Susan  
2046 Bahia Shores Road  
No Name Key, FL 33043  
(305) 515-2082  
(607) 967-8028  
[SHW42@aol.com](mailto:SHW42@aol.com)
15. Zeman, Larry  
1933 Bahia Shores Road  
No Name Key, FL 33043  
(305) 872-1173

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Attachments:

- August 2, 1996 Letter to Mr. Dale Finigin, Director of Engineering, Utility Board of Key West from Monroe County Administrator James Roberts stating the adopted Monroe County 2010 Plan as adopted has policies which are not in support of the extension of electrical service to No Name Key
- May 13, 1998 Letter of Understanding for the Electrification of No Name Key to Mr. Frank Greeman from Monroe County Planning Director Timothy McGarry, 7 pages.
- June 11, 1999 Letter of Denial of the Administrative Appeal by the No Name Key Taxpayers for Electricity to Mr. Frank Greeman from Mrs. Judith Chambers, 2 pages. The eight (8) page Planning Commission Resolution No. P17-99 is a part of this document, 10 pages.
- December 21, 1999 Letter to Mr. Frank Greenman from the Monroe County Planning Director Marlene Conaway stating the Planning Department cannot support or recommend a text amendment to the 2010 Comprehensive Plan to allow electrification of No Name Key, 2 pages.
- Composite Attachment: Twenty-three (23) letters in opposition to Agenda Item M-3. Ten (10) are from No Name Key homeowners and represent eight (8) households. Twelve (12) are from Keys-wide homeowners. And, one (1) is from a Keys-wide organization, Florida Keys Green Living and Energy Education (GLEE).

## **MONROE COUNTY CODE SECTION 9.5-258**

### **Sec. 9.5-258. Coastal barrier resources system overlay district.**

(a) *Purpose:* The purpose of the Coastal Barrier Resources System Overlay District is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the Coastal Barrier Resources System.

(b) *Application:* The Coastal Barrier Resources System Overlay District shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a Coastal Barrier Resources System Unit on current flood insurance rate maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: Central wastewater treatment collection systems; potable water; electricity, and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of this section and shall not apply to wastewater nutrient reduction cluster systems.

(Ord. No. 43-2001, § 1)

## **MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN**

### **Objective 102.8**

Monroe County shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resources System. [9J-5.006(3)(b)4]

#### **Policy 102.8.1**

Monroe County shall discourage developments which are proposed in units of Coastal Barrier Resources System (CBRS) [9J-5.006(3)(c)6]

#### **Policy 102.8.2**

Upon adoption of the Comprehensive Plan, Monroe County shall not create new access via new bridges, new causeways, new paved roads or new commercial marinas to or on units of the Coastal Barrier Resources System (CBRS). [9J-5.005(3)(c)6]

#### **Policy 102.8.3**

By January 4, 1997, shoreline hardening structures, including seawalls, bulkheads, groins, rip-rap, etc., shall not be permitted along shorelines of CBRS units. [9J-5.006(3)(c)6]

#### **Policy 102.8.4**

By January 4, 1998, privately-owned undeveloped land located within the CBRS units shall be considered for acquisition by Monroe County for conservation purposes through the Monroe County Natural Heritage and Park Program. [9J-5.006(3)(c)6]

#### **Policy 102.8.5**

Monroe County shall efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone service to CBRS units. These efforts shall include providing each of the utility providers with:

1. a map of the areas of Monroe County which are included in CBRS units;
2. a copy of the Executive Summary in Report to Congress: Coastal Barrier Resources System published by the U.S. Department of the Interior, Coastal Barriers Study Group, which specifies restrictions to federally subsidized development in CBRS units;
3. Monroe County policies regarding local efforts to discourage both private and public investment in CBRS units [9J-5.006(3)(c)6]

#### **Objective 209.3**

Monroe County shall take immediate actions to discourage private development in areas designated as units of the Coastal Barrier Resources System (CBRS). (See Future Land Use Objective 102.8 and related policies.) [9J-5.012(3)(b)1]

By January 4, 1997, Monroe County shall initiate programs which require exploration of feasible alternatives to funding of public facilities and infrastructure which will result in the loss of or damage to significant coastal or natural resources, including, but not limited to, wilderness areas, wildlife habitats, and natural vegetative communities. [9J-5.012(2)(b)11]

#### **Policy 215.2.1**

By January 4, 1997, Monroe County shall adopt Land Development Regulations which require consideration of feasible design and siting alternatives for new public facilities and infrastructure proposed within the coastal zone in order to minimize adverse impacts on natural resources. [9J-5.012(3)(c)1]

#### **Policy 215.2.3**

No public expenditures shall be made for new or expanded facilities in areas designated as units of the Coastal Barrier Resources System, saltmarsh and buttonwood wetlands, or offshore islands not currently accessible by road, with the exception of expenditures for conservation and parklands consistent with natural resource protection, and expenditures necessary for public health and safety. [9J-5.012(3)(c)1]

#### **Policy 217.4.2**

No public expenditures shall be made for new or expanded facilities in areas designated as units of the Coastal Barrier Resources System, undisturbed saltmarsh and buttonwood wetlands, or offshore islands not currently accessible by road, with the exception of expenditures for conservation and parklands consistent with natural resource protection, and expenditures necessary for public health and safety. [9J-5.012(3)(c)1]

#### **Policy 1301.7.12**

By January 4, 1998, Monroe County shall initiate discussions with the FCAA and providers of electricity and telephone service to assess the measures which could be taken to discourage or prohibit extension of facilities and services to Coastal Barrier Resource Systems (CBRS) units. [9J-5.006(3)(c)6]

#### **Policy 1401.2.2**

No public expenditures shall be made for new or expanded facilities in areas designated as units of the Coastal Barrier Resources System, undisturbed saltmarsh and buttonwood wetlands, or offshore islands not currently accessible by road, with the

exception of expenditures for conservation and parklands consistent with natural resource protection,  
and expenditures necessary for public health and safety. [9J-5.016(3)(c)1 and 9]

**ORDINANCE NO. 043 -2001**

AN ORDINANCE AMENDING THE MONROE COUNTY CODE BY ADDING SEC. 9.5-258; PROVIDING FOR THE SEVERIBILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR THE INCORPORATION INTO THE MONROE COUNTY CODE; AND DIRECTING THE CLERK OF THE BOARD TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE

**WHEREAS**, the Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System (CBRS) to restrict the federally subsidized development of coastal barrier areas and specifically prohibited the "construction or purchase of any structure, appurtenance, facility, or related infrastructure" 16 U.S.C. 3504(a)(1) in said areas; and

**WHEREAS**, Monroe County has 15 designated units of the CBRS which can be found listed in Table 3.21 of the Monroe County Year 2010 Comprehensive Plan Technical Document and illustrated on the Existing Land Use Maps of the Comprehensive Plan Map Atlas; and

**WHEREAS**, Objective 102.8 of Monroe County Year 2010 Comprehensive Plan states: "Monroe County shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resources System [9J-5.006(3)(b)4]"; and

**WHEREAS**, Policy 102.8.5 of Monroe County Year 2010 Comprehensive Plan states: "Upon adoption of the Comprehensive Plan, Monroe County shall initiate efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone services to CBRS units"; and

**WHEREAS**, Current Flood Insurance Rate Maps published for the National Flood Insurance Program by the Federal Emergency Management Agency, indicates there are five developed residential areas (with five structures or less per acre) and one commercial area that fall within the CBRS designation; and

**WHEREAS**, on Thursday, April 19, 2001 the Growth Management Staff was directed by the Board of County Commissioners to create an overlay district prohibiting the extension of public utilities to certain areas of the county; and

**WHEREAS**, the Development Review Committee on August 14, 2001, reviewed the legal authority and the proposed text, and recommended approval of the proposed text; and

**WHEREAS**, during a regular meeting held on September 26, 2001, the Monroe County Planning Commission conducted a public hearing on the proposed text, and recommended approval of the proposed text; and

**WHEREAS**, The Monroe County Board of County Commissioners was presented with the following information, which by reference is hereby incorporated as part of the record of said hearing:

1. The staff report prepared on September 19, 2001 by K. Marlene Conaway, Director, Planning and Environmental Resources.
2. Proposed changes to the Monroe County Land Development Regulations.
3. The sworn testimony of the Growth Management Staff.
4. Comments by the public; and

**WHEREAS**, the Monroe County Board of County Commissioners examined the proposed amendments to the Monroe County Code submitted by the Monroe County Planning Department; and

**WHEREAS**, the Monroe County Board of County Commissioners hereby supports the decision of the Monroe County Planning Commission and the staff of the Monroe County Planning Department; and

**WHEREAS**, it is the desire of the Monroe County Board of County Commissioners that the following amendment to the County Code be approved, adopted and transmitted to the state land planning agency for approval;

**NOW THEREFORE; BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:**

**Section 1.** Chapter 9.5, Article VII Division 2 is hereby amended to include the following:

**Sec. 9.5-258. Coastal barrier resources system overlay district.**

(a) *Purpose:* The purpose of the Coastal Barrier Resources System Overlay District is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the Coastal Barrier Resources System.

(b) *Application:* The Coastal Barrier Resources System Overlay District shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a Coastal Barrier Resources System Unit on current Flood Insurance Rate Maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity; and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of this ordinance and shall not apply to wastewater nutrient reduction cluster systems.

**Section 2.** If any section, subsection, sentence, clause, item, change, or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such validity.

**Section 3.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

**Section 4.** This ordinance shall be filed in the Office of the Secretary of State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance.

**Section 5.** This ordinance shall be transmitted by the Planning Department to the Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

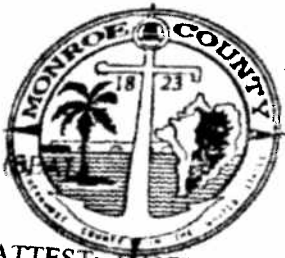
**Section 6.** The Director of Growth Management is hereby directed to forward a copy of this ordinance to the Municipal Code Corporation for the incorporation in the Monroe County Code of Ordinances once this ordinance is in effect.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 19th day of December, A.D., 2001.

Mayor Charles "Sonny" McCoy  
Mayor Pro Tem Dixie Spehar  
Commissioner Murray Nelson  
Commissioner George Neugent  
Commissioner Nora Williams

yes  
yes  
yes  
yes  
yes

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

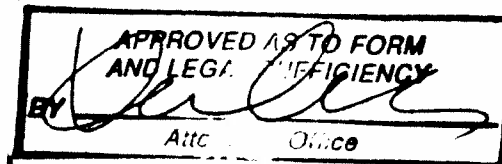


BY

[Signature]  
Mayor Charles "Sonny" McCoy

ATTEST: DANNY KOHLAGE, CLERK

[Signature]  
DEPUTY CLERK





CLERK OF THE CIRCUIT COURT  
MONROE COUNTY

BRANCH OFFICE  
MARATHON SUB COURTHOUSE  
3117 OVERSEAS HIGHWAY  
MARATHON, FLORIDA 33050  
TEL. (305) 289-6027  
FAX (305) 289-1745

MONROE COUNTY COURTHOUSE  
500 WHITEHEAD STREET  
KEY WEST, FLORIDA 33040  
TEL. (305) 292-3550  
FAX (305) 295-3663

BRANCH OFFICE  
PLANTATION KEY  
GOVERNMENT CENTER  
88820 OVERSEAS HIGHWAY  
PLANTATION KEY, FLORIDA 33070  
TEL. (305) 852-7145  
FAX (305) 852-7146

January 15, 2002

Department of State, Bureau of Administrative Code  
The Collins Building  
107 West Gaines Street, Suite L43  
Tallahassee, Florida 32399-0250

Dear Ms. Cloud:

Please be advised that at a Regular Meeting in formal session on December 19, 2001, the Board of County Commissioners of Monroe County adopted **Ordinance No. 043-2001** amending the Monroe County Land Development Regulations by adding Section 9.5-258 to establish a new Land Use Overlay District that will prohibit the extension or expansion of public utilities to units of the Coastal Barrier Resources System; Providing for the severability; Providing for the repeal of all Ordinances inconsistent herewith; Providing for incorporation into the Monroe County Code; and providing an effective date.

Attached hereto is a certified copy of the subject Ordinance for your handling. Should you have any questions concerning the above, please do not hesitate to contact this office.

Very truly yours,

Danny L. Kolhage  
Clerk of Court and ex-officio Clerk to the  
Board of County Commissioners

By Isabel C. DeSantis  
Isabel C. DeSantis, Deputy Clerk

Cc: Municipal Code Corporation  
County Commission  
Growth Management  
✓ File

**FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM (CODRS)  
CODING FORM**

Instructions: Florida's Department of State, Bureau of Administrative Code has developed the County Ordinance Data Retrieval System (CODRS) to facilitate the tracking of County ordinances in Florida's 67 Counties. CODRS' data base is composed of over 25,000 county ordinances enacted since 1974.

We request your cooperation in completing this coding form. It is to be completed whenever your county enacts a new ordinance. Simply complete this form and include it with other pertinent ordinance information that is submitted to the Bureau of Administrative Code.

To code this form properly, please refer to the "keyfields" description sheet that has been given to your County Attorney's Office. If you do not have this sheet please contact the Bureau. We will be happy to fax one to you for referencing purposes. Please fill out this form as completely as is possible.

Thank you for your assistance. Should you need further assistance please contact the Bureau of Administrative Code, Department of State at (850)488-8427 or Suncom 278-8427.

**COUNTY:** ( MONROE )

**COUNTY ORDINANCE #** ( 043 - 2001 )

**PRIMARY KEYFIELD**

**DESCRIPTOR:** ( LAND USE PLANNING )

**SECONDARY KEYFIELD**

**DESCRIPTOR:** ( ZONING )

**OTHER KEYFIELD**

**DESCRIPTOR:** ( ----- )

**ORDINANCE DESCRIPTION:** ( COASTAL BARRIER RESOURCES )  
(25 characters maximum including spaces)

**ORDINANCES AMENDED:** (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

**AMENDMENT # 1:** ( 9.5-258, MCC )

**AMENDMENT # 2:** ( ----- )

**ORDINANCES REPEALED:** (List below the ordinances that are repealed by this legislation.)

**REPEAL # 1:** ( ----- ) **REPEAL # 3:** ( ----- )

**REPEAL # 2:** ( ----- ) **REPEAL # 4:** ( ----- )

(Others repealed: List all that apply): -----

(FOR OFFICE USE ONLY):

**COUNTY CODE NUMBER:** ( ----- )

**KEYFIELD 1 CODE:** ( ----- )

**KEYFIELD 2 CODE:** ( ----- )

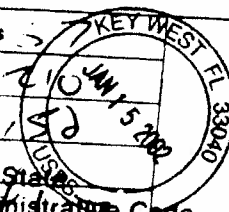
**KEYFIELD 3 CODE:** ( ----- )

Rev. 4/10/01

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**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
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| Postage                                        | \$ 2.10 |  | Postmark Here |
| Certified Fee                                  |         |                                                                                   |               |
| Return Receipt Fee (Endorsement Required)      |         |                                                                                   |               |
| Restricted Delivery Fee (Endorsement Required) |         |                                                                                   |               |

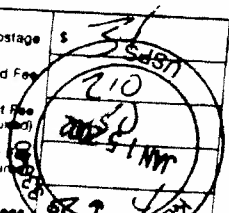
Department of State  
Bureau of Administrative Code

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DCA Final Order No.: DCA02-OR-032

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

In re: MONROE COUNTY LAND DEVELOPMENT  
REGULATIONS ADOPTED BY  
MONROE COUNTY ORDINANCE NO. 043-2001

FILED FOR RECORD  
2002 FEB 11 PM 2:51  
CLK. CIR. CT.  
MONROE COUNTY, FLA.

**FINAL ORDER**

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001), approving Monroe County Ordinance No. 043-2001 as set forth below.

**FINDINGS OF FACT**

1. The Florida Keys Area is a statutorily designated area of critical state concern, and Monroe County is a local government within the Florida Keys Area.
2. On January 28, 2002, the Department received for review Monroe County Ordinance No. 043-2001 which was adopted by the Monroe County Board of County Commissioners on December 19, 2001 ("Ord. 043-2001"). Ord. 043-2001 establishes a Land Use Overlay District that will prohibit the extension or expansion of public utilities to units of the Coastal Barrier Resources System.
3. Ord. 043-2001 is consistent with the County's 2010 Comprehensive Plan.

**CONCLUSIONS OF LAW**

4. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001).

5. Monroe County is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2001) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2001). The regulations adopted by Ord. 043-2001 are land development regulations.

7. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the "Principles"). § 380.0552(7), *Fla. Stat.*; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions. § 380.0552(7), *Fla. Stat.* (2001).

8. Ord. 043-2001 promotes and furthers the following Principles in § 380.0552(7):

- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (b) To protect shoreline and marine resources including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

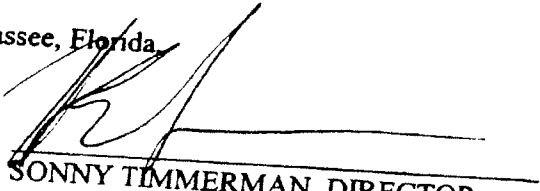
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

9. Ord. 043-2001 is not inconsistent with the remaining Principles. Ord. 043-2001 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 043-2001 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.

  
SONNY TIMMERMAN, DIRECTOR  
Division of Community Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

#### NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE ENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND

CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

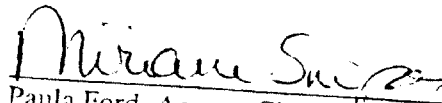
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 14<sup>th</sup> day of February, 2002.

  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable George Neugent  
Mayor of Monroe County  
500 Whitehead Street  
Key West, Florida 33040

Danny L. Kolhage  
Clerk to the Board of County Commissioners  
500 Whitehead Street  
Key West, Florida 33040

Timothy J. McGarry, AICP  
Director, Growth Management Division  
2798 Overseas Highway, Suite 400  
Marathon, Florida 33050

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee  
Rebecca Jetton, DCA Florida Keys Field Office  
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee

Municipal Code Corporation  
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Supplement 76

04/08/2002

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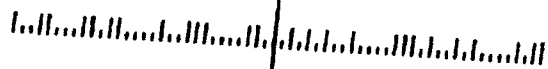
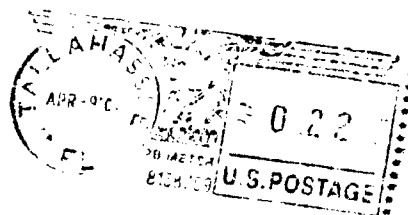
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TO:

Ms. Pamela G. Hancock  
Deputy Clerk  
Monroe County  
500 Whitehead Street  
Key West, FL 32040



# Ninety-seventh Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington  
on Monday, the twenty-fifth day of January,  
one thousand nine hundred and eighty-two*

### An Act

To protect and conserve fish and wildlife resources, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Coastal Barrier Resources Act".

#### SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS. – The Congress finds that–

- (1) coastal barriers along the Atlantic and Gulf coasts of the United States and the adjacent wetlands, marshes, estuaries, inlets and nearshore waters provide–
  - (A) habitats for migratory birds and other wildlife; and
  - (B) habitats which are essential spawning, nursery, nesting, and feeding areas for commercially and recreationally important species of finfish and shellfish, as well as other aquatic organisms such as sea turtles;
- (2) coastal barriers contain resources of extraordinary scenic, scientific, recreational, natural, historic, archeological, cultural, and economic importance; which are being irretrievably damaged and lost due to development on, among, and adjacent to, such barriers;
- (3) coastal barriers serve as natural storm protective buffers and are generally unsuitable for development because they are vulnerable to hurricane and other storm damage and because natural shoreline recession and the movement of unstable sediments undermine manmade structures;
- (4) certain actions and programs of the Federal Government have subsidized and permitted development on coastal barriers and the result has been the loss of barrier resources, threats to human life, health, and property, and the expenditure of millions of tax dollars each year; and
- (5) a program of coordinated action by Federal, State, and local governments is critical to the more appropriate use and conservation of coastal barriers.

(b) PURPOSE. – The Congress declares that it is the purpose of this Act to minimize the loss of human life, wasteful expenditure of Federal revenues, and

the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts by restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers, by establishing a Coastal Barrier Resources System, and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

### SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "undeveloped coastal barrier" means—

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that—

(i) consists of unconsolidated sedimentary materials,

(ii) is subject to wave, tidal, and wind energies, and

(iii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters;

but only if such feature and associated habitats (i) contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes, and (ii) are not included within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization as defined in section 170(h)(3) of the Internal Revenue Code of 1954, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes.

(2) The term "Committees" refers to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(3) The term "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than—

(A) general revenue-sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221);

(B) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(C) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(D) assistance for environmental studies, planning, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(E) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age survivors or disability insurance program.

Effective October 1, 1983, such term includes flood insurance described in section 1321 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4028).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "System unit" means any undeveloped coastal barrier, or combination of closely-related undeveloped coastal barriers, included within the Coastal Barrier Resources System established by section 4.

#### SEC. 4. THE COASTAL BARRIER RESOURCES SYSTEM.

(a) ESTABLISHMENT. – (1) There is established the Coastal Barrier Resources System which shall consist of those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States that are identified and generally depicted on the maps that are entitled "Coastal Barrier Resources System", numbered A01 through T12, and dated September 30, 1982.

(2) Any person or persons or other entity owning or controlling land on an undeveloped coastal barrier, associated landform or any portion thereof not within the Coastal Barrier Resources System established under paragraph (1) may, within one year after the date of enactment of this Act, elect to have such land included within the Coastal Barrier Resources System. This election shall be made in compliance with regulations established for this purpose by the Secretary not later than one hundred and eighty days after the date of enactment of this Act; and, once made and filed in accordance with the laws regulating the sale or other transfer of land or other real property of the State in which such land is located, shall have the same force and effect as if such land had originally been included within the Coastal Barrier Resources System.

(b)(1) As soon as practicable after the enactment of this Act, the maps referred to in paragraph (1) of subsection (a) shall be filed with the Committees by the Secretary, and each such map shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map may be made. Each such map shall be on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, Department of the Interior, and in other appropriate offices of the Service.

(2) As soon as practicable after the date of the enactment of this Act, the Secretary shall provide copies of the maps referred to in paragraph (1) of subsection (a) to the chief executive officer of (A) each State and county or equivalent jurisdiction in which a system unit is located, (B) each State coastal zone management agency in those States which have a coastal zone management plan approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) and in which a system unit is located, and (C) each appropriate Federal agency.

(c) BOUNDARY MODIFICATIONS. – (1) Within 180 days after the date of enactment of this Act, the Secretary may make such minor and technical modifications to the boundaries of system units as depicted on the maps referred to in paragraph (1) of subsection (a) as are consistent with the purposes of this Act and necessary to clarify the boundaries of said system units; except that, for

system units within States which have, on the date of enactment, a coastal zone management plan approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455)–

(A) each appropriate State coastal zone management agency may within 90 days after the date of enactment of this Act, submit to the Secretary proposals for such minor and technical modifications; and

(B) the Secretary may, within 180 days after the date of enactment of this Act, make such minor and technical modifications to the boundaries of such system units.

(2) The Secretary shall, not less than 30 days prior to the effective date of any such boundary modification made under the authority of paragraph (1), submit written notice of such modification to (A) each of the Committees and (B) each of the appropriate officers referred to in paragraph (2) of subsection (b).

(3) The Secretary shall conduct, at least once every five years, a review of the maps referred to in paragraph (1) of subsection (a) and make, in consultation with the appropriate officers referred to in paragraph (2) of subsection (b), such minor and technical modifications to the boundaries of system units as are necessary solely to reflect changes that have occurred in the size or location of any system units as a result of natural forces.

(4) If, in the case of any minor and technical modification to the boundaries of system units made under the authority of this subsection, an appropriate chief executive officer of a State, county or equivalent jurisdiction, or State coastal zone management agency to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, or if the Secretary fails to adopt a modification pursuant to a proposal submitted by an appropriate State coastal zone management agency under paragraph (1)(A), the Secretary shall submit to the chief executive officer a written justification for his failure to make modifications consistent with such comments or proposals.

#### SEC. 5. LIMITATIONS ON FEDERAL EXPENDITURES AFFECTING THE SYSTEM.

(a) Except as provided in section 6, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Coastal Barrier Resources System, including, but not limited to–

(1) the construction or purchase of any structure, appurtenance, facility, or related infrastructure;

(2) the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(3) the carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 on maps numbered S01 through S08 for purposes other than encouraging

- development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.
- (b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if—
- (1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date of the enactment of this Act; or
  - (2) no legally binding commitment for the expenditure or financial assistance was made before such date of enactment.

#### SEC. 6. EXCEPTIONS.

- (a) Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Coastal Barrier Resources System for—
- (1) any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body;
  - (2) the maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements;
  - (3) the maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly-owned or publicly-operated roads, structures, or facilities that are essential links in a larger network or system;
  - (4) military activities essential to national security;
  - (5) the construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto; and
  - (6) any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:
    - (A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.
    - (B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.
    - (C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).
    - (D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications.
    - (E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act

of 1974 (42 U.S.C. 5145 and 5146) and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

(b) For purposes of subsection (a)(2), a channel improvement or a related structure shall be treated as an existing improvement or an existing related structure only if all, or a portion, of the moneys for such an improvement or structure was appropriated before the date of the enactment of this Act.

#### SEC. 7. CERTIFICATION OF COMPLIANCE.

The Director of the Office of Management and Budget shall, on behalf of each Federal agency concerned, make written certification that each such agency has complied with the provisions of this Act during each fiscal year beginning after September 30, 1982. Such certification shall be submitted on an annual basis to the House of Representatives and the Senate pursuant to the schedule required under the Congressional Budget and Impoundment Control Act of 1974.

#### SEC. 8. PRIORITY OF LAWS.

Nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State, so that the two cannot be reconciled or consistently stand together. This Act shall in no way be interpreted to interfere with a State's right to protect, rehabilitate, preserve, and restore lands within its established boundary.

#### SEC. 9. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

## SEC. 10. REPORTS TO CONGRESS.

- (a) IN GENERAL. – Before the close of the 3-year period beginning on the date of the enactment of this Act, the Secretary shall prepare and submit to the Committees a report regarding the System.
- (b) CONSULTATION IN PREPARING REPORT. – The Secretary shall prepare the report required under subsection (a) in consultation with the Governors of the States in which System units are located and with the coastal zone management agencies of the States in which System units are located and after providing opportunity for, and considering, public comment.
- (c) REPORT CONTENT. – The report required under subsection (a) shall contain–

- (1) recommendations for the conservation of the fish, wildlife, and other natural resources of the System based on an evaluation and comparison of all management alternatives, and combinations thereof, such as State and local actions (including management plans approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.)), Federal actions (including acquisition for administration as part of the National Wildlife Refuge System), and initiatives by private organizations and individuals;
- (2) recommendations for additions to, or deletions from, the Coastal Barrier Resources System, and for modifications to the boundaries of System units;
- (3) a summary of the comments received from the Governors of the States, State coastal zone management agencies, other government officials, and the public regarding the System; and
- (4) an analysis of the effect, if any, that general revenue sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221) have had on undeveloped coastal barriers.

## SEC. 11. AMENDMENTS REGARDING FLOOD INSURANCE.

- (a) Section 1321 of the National Flood Insurance Act of 1968 (42 U.S.C. 4028) is amended to read as follows:

### “UNDEVELOPED COASTAL BARRIERS

- “SEC. 1321. No new flood insurance coverage may be provided under this title on or after October 1, 1983, for any new construction or substantial improvements of structures located on any coastal barrier within the Coastal Barrier Resources System established by section 4 of the Coastal Barrier Resources Act. A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section.”
- (b) Section 341 (d)(2) of the Omnibus Budget and Reconciliation Act of 1981 (Public Law 97-35) is repealed.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Department of the Interior \$1,000,000 for the period beginning October 1, 1982, and ending September 30, 1985, for purposes of carrying out sections 4 and 10.

*Speaker of the House of Representatives*

*Vice President of the United States and  
President of the Senate*

# **USDA, RURAL DEVELOPMENT Environmental Compliance Library Coastal Barrier Resources Act**

An Act

To reauthorize the Coastal Barrier Resources Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## **SECTION 1. "16 USC 3501 note" SHORT TITLE.**

This Act may be cited as the "Coastal Barrier Improvement Act of 1990".

## **SEC. 2. DEFINITION AMENDMENTS.**

(a) UNDEVELOPED COASTAL BARRIER. -- The Coastal Barrier Resources Act is amended in section 3(1)(A) (16 U.S.C. 3502(1)(A)) --

(1) by striking clause (i); and

(2) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(b) SYSTEM MAPS; SYSTEM. --

(1) REPEAL AND ADDITION OF DEFINITION. -- Section 3(6) of the Coastal Barrier Resources Act (16 U.S.C. 3502(6)) is amended to read as follows:

"(6) The term 'System' means the Coastal Barrier Resources System established by section 4(a)."

(2) CONFORMING AMENDMENTS. -- Section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) is amended --

(A) in subsection (a), by striking "Coastal Barrier Resources";

(B) in subsection (b)(1), by striking "of the enactment of this Act" and inserting in lieu thereof "on which the relevant System unit or portion of the System unit was included within the System under this Act or the Coastal Barrier Improvement Act of 1990"; and

(C) at the end of subsection (b)(2), by striking "of enactment".

(c) OTHERWISE PROTECTED AREAS. -- Section 3(1) of the Act (16 U.S.C. 3502(1)) is amended --

(1) by striking "(i)" immediately before "contain few"; and

- (2) by inserting a period immediately following "ecological processes" and striking the balance of the sentence."

### **SEC. 3. COASTAL BARRIER RESOURCES SYSTEM, GENERALLY.**

Section 4 of the Coastal Barrier Resources Act (16 U.S.C. 3503) is amended to read as follows:

#### **"SEC. 4. ESTABLISHMENT OF COASTAL BARRIER RESOURCES SYSTEM.**

- "(a) **ESTABLISHMENT.** -- There is established the Coastal Barrier Resources System, which shall consist of those undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and generally depicted on the maps on file with the Secretary entitled 'Coastal Barrier Resources System', dated October 24, 1990, as such maps may be revised by the Secretary under section 4 of the Coastal Barrier Improvement Act of 1990.
- "(b) **SYSTEM MAPS.** -- The Secretary shall keep the maps referred to in subsection (a) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, and in such other offices of that service as the Director considers appropriate.
- "(c) **BOUNDARY REVIEW AND MODIFICATION.** -- At least once every 5 years, the Secretary shall review the maps referred to in subsection (a) and shall make, in consultation with the appropriate State, local, and Federal officials, such minor and technical modifications to the boundaries of System units as are necessary solely to reflect changes that have occurred in the size or location of any System unit as a result of natural forces."

### **SEC. 4. "16 USC 3503 NOTE" TECHNICAL REVISION OF MAPS; MODIFICATION OF BOUNDARIES; ADDITIONS TO SYSTEM.**

#### **(a) TECHNICAL REVISION OF MAPS AND PROVISIONS TO STATE AND LOCAL GOVERNMENT.**

Not later than 180 days after the date of the enactment of this Act, the Secretary shall

- (1) make such technical revisions to the maps referred to in section 4(a) of the Coastal Barrier Resources Act (as amended by section 3 of this Act) as may be necessary to correct existing clerical and typographical errors in the maps; and
- (2) provide copies of the maps, as so revised, to --
  - (A) each State and each local government in which is located a unit of the System;
  - (B) the coastal zone management agency of each State --
    - (i) in which is located a unit of the System; and
    - (ii) which has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455); and
  - (C) appropriate Federal agencies.

(b) RECOMMENDATIONS OF STATE AND LOCAL GOVERNMENTS FOR BOUNDARY MODIFICATIONS.

(1) Not later than 1 year after the date of the enactment of this Act --

(A) a local government in which is located a unit of the System and which is in a State which has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455); and

(B) the coastal zone management agency of a State in which is located a unit of the System and which has such a program approved; may each submit to the Secretary recommendations for minor and technical modifications to the boundaries of existing units of the System located in that local government or State, respectively.

(2) If, in the case of any minor and technical modification to the boundaries of System units made under the authority of subsection (d) of this section, an appropriate chief executive officer of a State, county or equivalent jurisdiction, or State coastal zone management agency to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, or if the Secretary fails to adopt a modification pursuant to a proposal submitted by an appropriate State coastal zone management agency under paragraph (1) of this subsection, the Secretary shall submit to the chief executive officer a written justification for the failure to make modifications consistent with such comments or proposals.

(c) ELECTIONS TO ADD TO SYSTEM. --

(1) PROVISION OF MAPS BY SECRETARY. -- Not later than 180 days after the date of the enactment of this Act, the Secretary shall provide --

(A) to each local government in which is located an undeveloped coastal barrier not included within the System; and

(B) to the Governor of each State in which such an area is located; maps depicting those undeveloped coastal barriers not included within the System located in that local government or State, respectively.

(2) ELECTIONS. -- Not later than 18 months after the date of the enactment of this Act, a local government and the Governor of any State referred to in paragraph (1), and any qualified organization --

(A) may each elect to add to the System, as a new unit or as an addition to an existing unit, any area of qualified coastal barrier (or any portion thereof) which is owned or held by the local government, State, or qualified organization, respectively;

(B) shall notify the Secretary of that election; and

(C) shall submit to the Secretary a map depicting the area, if

(i) the area (or portion) is not depicted on a map provided by the Secretary under paragraph (1); or

(ii) the local government, State, or qualified organization was not provided maps under paragraph (1).

- (3) EFFECTIVE DATE OF ELECTION. -- An area elected by a local government, Governor of a State, or qualified organization to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under subsection (e)(1)(C) with respect to that election.

(d) ADDITION OF EXCESS FEDERAL PROPERTY. --

- (1) CONSULTATION AND DETERMINATION. -- Prior to transfer or disposal of excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) that may be an undeveloped coastal barrier, the Administrator of General Services shall consult with and obtain from the Secretary a determination as to whether and what portion of the property constitutes an undeveloped coastal barrier. Not later than one hundred and eighty days after the initiation of such consultation, the Secretary shall make and publish notice of such determination. Immediately upon issuance of a positive determination, the Secretary shall --

(A) prepare a map depicting the undeveloped coastal barrier portion of such property; and

(B) shall publish in the Federal Register notice of the addition of such property to the System.

- (2) EFFECTIVE DATE OF INCLUSION. -- An area to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under subsection (d)(1)(B) with respect to that area.

- (3) REVISION OF MAPS. -- As soon as practicable after the date on which a unit is added to the System under subsection (d)(2), the Secretary shall revise the maps referred to in section 4(a) of the Act (as amended by section 3 of this Act) to reflect each such addition.

(e) MODIFICATION OF BOUNDARIES, REVISION OF MAPS, AND PUBLICATION OF NOTICE. --

- (1) IN GENERAL. -- Not later than 2 years after the date of the enactment of this Act, the Secretary --

(A) based on recommendations submitted by local governments and State coastal zone management agencies under subsection (b), may make such minor and technical modifications to the boundaries of existing units of the System as are consistent with the purposes of the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.) and are necessary to clarify the boundaries of those units;

(B) shall revise the maps referred to in section 4(a) of the Act (as amended by section 3 of this Act) --

(i) to reflect those modifications; and

(ii) to reflect each election of a local government, Governor of a State, or qualified organization to add an area to the System pursuant to subsection (c); and

(C) shall publish in the Federal Register notice of each such modification or election.

- (2) EFFECTIVE DATE OF MODIFICATIONS. -- A modification of the boundaries of a unit of the System under paragraph (1)(A) shall take effect on the date on which the Secretary

published notice in the Federal Register under paragraph (1)(C) with respect to that modification.

- (f) NOTIFICATION REGARDING MODIFICATIONS AND ELECTIONS. -- Not less than 30 days before the effective date of any modification of the boundaries of a unit of the System under subsection (d)(1)(A), or of an election of a local government, Governor of a State, or qualified organization to add an area of qualified coastal barrier to the System pursuant to subsection (c) or of an addition to the System pursuant to subsection (d), the Secretary shall submit written notice of such modification or election to --

- (1) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate; and
- (2) appropriate State and Federal officials.

## **SEC. 5. EXCEPTIONS TO LIMITATIONS ON FEDERAL EXPENDITURES.**

- (a) EXCEPTIONS, GENERALLY. -- Section 6 of the Coastal Barrier Resources Act (16 U.S.C. 3505) is amended to read as follows:

### **"SEC. 6. EXCEPTIONS TO LIMITATIONS ON EXPENDITURES.**

- "(a) IN GENERAL. -- Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available within the System for the following:

- "(1) Any use of facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.
- "(2) The maintenance or construction of improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction.
- "(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.
- "(4) Military activities essential to national security.
- "(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto.
- "(6) Any of the following actions or projects, if a particular expenditure or the making available of particular assistance for the action or project is consistent with the purposes of this Act:
  - "(A) Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.
  - "(B) Establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

"(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

"(D) Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.

"(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

"(F) Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of publicly owned or publicly operated roads, structures, and facilities.

"(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

"(b) EXISTING FEDERAL NAVIGATION CHANNELS. -- For purposes of subsection (a)(2), a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System unit was included within the System.

"(c) EXPANSION OF HIGHWAYS IN MICHIGAN. -- The limitations on the use of Federal expenditures or financial assistance within the System under subsection (a)(3) shall not apply to a highway --

"(1) located in a unit of the System in Michigan; and

"(2) in existence on the date of the enactment of the Coastal Barrier Improvement Act of 1990.

"(d) SERVICES AND FACILITIES OUTSIDE SYSTEM. --

"(1) IN GENERAL. -- Except as provided in paragraphs (2) and (3) of this subsection, limitations on the use of Federal expenditures or financial assistance within the System under section 5 shall not apply to expenditures or assistance provided for services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System (as depicted on the maps referred to in section 4(a)) which relate to an activity within that unit.

"(2) PROHIBITION OF FLOOD INSURANCE COVERAGE. -- No new flood insurance coverage may be provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) for any new construction or substantial improvements relating to services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

"(3) PROHIBITION OF HUD ASSISTANCE. --

"(A) IN GENERAL. -- No financial assistance for acquisition, construction, or improvement purposes may be provided under any program administered by the Secretary of Housing and Urban Development for any services or facilities and

related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

"(B) DEFINITION OF FINANCIAL ASSISTANCE. -- For purposes of this paragraph, the term 'financial assistance' includes any contract, loan, grant, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages."

(b) CONFORMING AMENDMENT. -- Subsection (d) of section 204 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (16 U. S.C. 3505 note) is repealed.

(c) APPLICATION OF EXISTING LOUISIANA EXCEPTION. -- Section 5(a)(3) of the Coastal Barrier Resources Act (16 U.S.C. 3504(a)(3)) is amended by inserting "and LA07" after "S01 through S08".

#### **SEC. 6. "16 USC 3503 NOTE" PACIFIC COASTAL BARRIER PROTECTION STUDY AND MAPS.**

IN GENERAL. --

(1) STUDY. -- Not later than 6 months after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Environment and Public Works of the Senate a study which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States south of 49 degrees north latitude through inclusion in the System. Such study shall examine --

(A) the potential for loss of human life and damage to fish, wildlife, other natural resources, and the potential for the wasteful expenditure of Federal revenues given the geologic differences of the coastal barriers along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts; and

(B) the differences in extreme weather conditions which exist along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts.

(2) PREPARATION AND SUBMISSION OF MAPS. --

(A) As soon as practicable after the date of the enactment of this Act, the Secretary shall prepare maps identifying the boundaries of those undeveloped coastal barriers (as that term is defined in section 3(1) of the Coastal Barrier Resources Act (16 U.S.C. 3502(1)) of the United States bordering the Pacific Ocean south of 49 degrees north latitude.

(B) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Environment and Public Works of the Senate maps identifying the boundaries of those undeveloped coastal barriers of the United States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System.

## **SEC. 7. SPECIAL UNIT.**

- (a) DESIGNATION. -- The southernmost portion of unit P-11 of the System, as depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act (as amended by this Act), located on Hutchinson Island north of St. Lucie Inlet in Florida, is designated as the "Frank M. McGilvery Unit". In revising those maps under section 4( a) of this Act, the Secretary shall so identify that unit.
- (b) REFERENCES. -- Any reference in a law, map, regulation, document, paper, or other record of the United States to the unit of the System referred to in subsection (a) is deemed to be a reference to the "Frank M. McGilvery Unit" of the System.

## **SEC. 8. "16 USC 3503 note" REPORT REGARDING COASTAL BARRIER MANAGEMENT.**

- (a) COASTAL BARRIERS TASK FORCE. --
  - (1) ESTABLISHMENT. -- There is established an interagency task force to be known as the Coastal Barriers Task Force (hereinafter in this section referred to as the "Task Force").
  - (2) MEMBERSHIP. -- The Task Force shall be composed of 11 individuals as follows:
    - (A) A designee of the Secretary of Agriculture.
    - (B) A designee of the Secretary of Commerce.
    - (C) A designee of the Secretary of Defense.
    - (D) A designee of the Secretary of Energy.
    - (E) A designee of the Secretary of Housing and Urban Development.
    - (F) A designee of the Secretary of the Interior.
    - (G) A designee of the Secretary of Transportation.
    - (H) A designee of the Secretary of the Treasury, who shall represent the Internal Revenue Service.
    - (I) A designee of the Administrator of the Environmental Protection Agency.
    - (J) A designee of the Director of the Federal Emergency Management Agency.
    - (K) A designee of the Administrator of the Small Business Administration.
  - (3) CHAIRPERSON. -- The chairperson of the Task Force shall be the designee of the Secretary of the Interior.
- (b) REPORT. --
  - (1) IN GENERAL. -- Not later than the expiration of the 2-year period beginning on the date of the enactment of this Act, the Task Force shall submit to the Congress a report regarding the Coastal Barrier Resources System.
  - (2) CONTENTS. -- The report required under paragraph (1) shall include the following:

- (A) An analysis of the effects of any regulatory activities of the Federal Government on development within units of the System, for the period from 1975 to 1990.
  - (B) An analysis of the direct and secondary impacts of tax policies of the Federal Government on development (including development of second home and investment properties) within units of the System, for the period from 1975 to 1990.
  - (C) An estimate and comparison of the costs to the Federal Government with respect to developed coastal barriers on which are located units of the System, for the period from 1975 to 1990, which shall include costs of shore protection activities, beach renourishment activities, evacuation services, disaster assistance, and flood insurance subsidies under the national flood insurance program.
  - (D) A determination of the number of structures for which flood insurance under the national flood insurance program has been unavailable since the enactment of the National Flood Insurance Act of 1968 because of the prohibition, under section 1321 of such Act, of the provision of insurance for structures located on coastal barriers within the System.
  - (E) An estimate of the number of existing structures located on coastal barriers that are included within the System because of the expansion of the System under this Act and the amendments made by this Act.
  - (F) A summary of the opinions and comments expressed pursuant to paragraph (3).
  - (G) Recommendations for Federal policies and legislative action with respect to developed and undeveloped coastal barriers to promote the protection of coastal barriers and minimize activities of the Federal Government that contribute to the destruction and degradation of coastal barriers.
- (3) HEARINGS. -- In carrying out its responsibilities under this subsection, the Task Force shall hold hearings to provide opportunity for State and local governments and members of the public to express their opinions and comment on Federal policy regarding coastal barriers.
- (c) TERMINATION. -- The Task Force shall terminate 90 days after submission of the report required under subsection (b)(1).

## **SEC. 9. PROHIBITION OF FLOOD INSURANCE COVERAGE IN CERTAIN COASTAL BARRIERS.**

Section 1321 of the National Flood Insurance Act of 1968 (42 U.S.C. 4028) is amended --

- (1) by inserting "(a)" after the section designation; and
- (2) by adding at the end the following new subsection:
  - "(b) No new flood insurance coverage may be provided under this title after the expiration of the 1-year period beginning on the date of the enactment of the Coastal Barrier Improvement Act of 1990 for any new construction or substantial improvements of structures located in any area identified and depicted on the maps referred to in section 4( a) of the Coastal Barrier Resources Act as an area that is (1) not within the Coastal Barrier Resources System and (2) is in an otherwise protected area. Notwithstanding the preceding sentence,

new flood insurance coverage may be provided for structures in such protected areas that are used in a manner consistent with the purpose for which the area is protected."

#### **SEC. 10. "12 USC 1441a-3" RTC AND FDIC PROPERTIES.**

##### **(a) REPORTS. --**

- (1) **SUBMISSION.** -- The Resolution Trust Corporation and the Federal Deposit Insurance Corporation shall each submit to the Congress for each year a report identifying and describing any property that is covered property of the corporation concerned as of September 30 of such year. The report shall be submitted on or before March 30 of the following year.
- (2) **CONSULTATION.** -- In preparing the reports required under this subsection, each corporation concerned may consult with the Secretary of the Interior for purposes of identifying the properties described in paragraph (1).

##### **(b) LIMITATION ON TRANSFER. --**

- (1) **NOTICE.** -- The Resolution Trust Corporation and the Federal Deposit Insurance Corporation may not sell or otherwise transfer any covered property unless the corporation concerned causes to be published in the Federal Register a notice of the availability of the property for purchase or other transfer that identifies the property and describes the location, characteristics, and size of the property.
- (2) **EXPRESSION OF SERIOUS INTEREST.** -- During the 90-day period beginning on the date that notice under paragraph (1) concerning a covered property is first published, any governmental agency or qualified organization may submit to the corporation concerned a written notice of serious interest for the purchase or other transfer of a particular covered property for which notice has been published. The notice of serious interest shall be in such form and include such information as the corporation concerned may prescribe.
- (3) **PROHIBITION OF TRANSFER.** -- During the period under paragraph (2), a corporation concerned may not sell or otherwise transfer any covered property for which notice has been published under paragraph (1). Upon the expiration of such period, the corporation concerned may sell or otherwise transfer any covered property for which notice under paragraph (1) has been published if a notice of serious interest under paragraph (2) concerning the property has not been timely submitted.
- (4) **OFFERS AND PERMITTED TRANSFER.** -- If a notice of serious interest in a covered property is timely submitted pursuant to paragraph (2), the corporation concerned may not sell or otherwise transfer such covered property during the 90-day period beginning upon the expiration of the period under paragraph (2) except to a governmental agency or qualified organization for use primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes, unless all notices of serious interest under paragraph (2) have been withdrawn.

##### **(c) DEFINITIONS. -- For purposes of this section:**

- (1) **CORPORATION CONCERNED.** -- The term "corporation concerned" means --
  - (A) the Federal Deposit Insurance Corporation, with respect to matters relating to the Federal Deposit Insurance Corporation; and

(B) the Resolution Trust Corporation with respect to matters relating to the Resolution Trust Corporation.

(2) COVERED PROPERTY. -- The term "covered property" means any property --

(A) to which --

(i) the Resolution Trust Corporation has acquired title in its corporate or receivership capacity; or

(ii) the Federal Deposit Insurance Corporation has acquired title in its corporate capacity or which was acquired by the former Federal Savings and Loan Insurance Corporation in its corporate capacity; and

(B) that --

(i) is located within the Coastal Barrier Resources System; or

(ii) is undeveloped, greater than 50 acres in size, and adjacent to or contiguous with any lands managed by a governmental agency primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

(3) GOVERNMENTAL AGENCY. -- The term "governmental agency" means any agency or entity of the Federal Government or a State or local government.

(4) UNDEVELOPED. -- The term "undeveloped" means --

(A) containing few manmade structures and having geomorphic and ecological processes that are not significantly impeded by any such structures or human activity; and

(B) having natural, cultural, recreational, or scientific value of special significance.

#### **SEC. 11. ACQUISITION OF PROPERTY BY SECRETARY OF THE INTERIOR.**

The Secretary of the Interior may purchase any property within the area added to unit T-12 of the System by this Act, as depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act. The Secretary of the Interior shall provide that any property purchased under this section is used and administered in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee).

#### **SEC. 12. "16 USC 3503 note" DEFINITIONS.**

For purposes of this Act --

(1) the term "undeveloped coastal barrier" means --

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that --

(i) is subject to wave, tidal, and wind energies, and

- (ii) protects landward aquatic habitats from direct wave attack; and
- (B) all associated aquatic habitats including the adjacent wetlands, marches, estuaries, inlets, and nearshore waters; but only if such features and associated habitats contain few manmade structures and these structures, and man's activities on such features and within such habitats, do not significantly impede geomorphic and ecological processes.
- (2) the term "otherwise protected area" means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes;
- (3) the term "qualified organization" means such an organization under section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3));
- (4) the term "Secretary" means the Secretary of the Interior; and
- (5) the term "System" means the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.), as amended by this Act.

### **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

- (a) COASTAL BARRIER RESOURCES ACT. -- Section 12 of the Coastal Barrier Resources Act (16 U.S.C. 3510) is amended to read as follows:

#### **"SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

"There is authorized to be appropriated to the Secretary for carrying out this Act not more than \$1,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993."

#### **̄ (b) THIS ACT. --**

(1) IN GENERAL. -- There is authorized to be appropriated to the Secretary for carrying out this Act not more than \$1,000,000 for each of the fiscal years 1991 and 1992.

(2) PROPERTY ACQUISITION. -- In addition to the amounts authorized to be appropriated under paragraph (1), there is authorized to be appropriated to the Secretary of the Interior during fiscal years 1991, 1992, and 1993 an aggregate amount of \$15,000,000 to carry out section 11.

### **SEC. 14. CERTIFICATION OF COMPLIANCE.**

Section 7 of the Coastal Barrier Resources Act (16 U.S.C. 3506) is amended to read as follows:

#### **"SEC. 7. CERTIFICATION OF COMPLIANCE.**

"(a) REGULATIONS. -- Not later than 12 months after the date of enactment of the Coastal Barrier Improvement Act of 1990, the head of each Federal agency affected by this Act shall promulgate regulations to assure compliance with the provisions of this Act.

"(b) CERTIFICATION. -- The head of each Federal agency affected by this Act shall report and certify that each such agency is in compliance with the provisions of this Act. Such reports and certifications shall be submitted annually to the Committees and the Secretary."

#### **SEC. 15. DARE COUNTY, NORTH CAROLINA, TRANSFER.**

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina, all rights, title, and interest of the United States in Coast Guard property and improvements located on the northern end of Pea Island east side of State road 1257, 0.3 miles north of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.

Approved November 16, 1990.

#### **ADDENDUM**

##### **Section 1. CORRECTIONS TO MAPS.**

###### **(a) In General -**

The Secretary of the Interior shall, not later than 30 days after the date of enactment of this Act, make such corrections to the maps described in subsection (b) as are necessary to ensure that -

- (1) depictions of areas on the maps are consistent with the depictions of areas appearing on the maps entitled "Coastal Barrier Resources System", dated September 27, 1994, and on file with the Secretary of the Interior; and
- (2) the Coastal Barrier Resources System does not include any area that, on the day before the date of the enactment of this Act, was part of unit FL-05P of the SYSTEM.

###### **(b) MAPS DESCRIBED. -**

The maps described in this subsection are maps that -

- (1) are included in a set of maps entitled "Coastal Barrier Resources System", dated October 24, 1990; and
- (2) related to the following units of the Coastal Barrier Resources System; AL-01P, FL-05P, P11A, P17, P17A, P18P, P19P, FL-15, FL-95P, FL-36P, P31P, FL-72P, M121, NY75, and VA62P.

###### **(c) AUTHORIZATION OF APPROPRIATIONS. -**

Section 12 of the Coastal Barrier Resources Act (16 U.S.C. 3510) IS AMENDED TO READ AS FOLLOWS;

##### **"SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to the Secretary for carrying out this Act \$2,000,000 for each of fiscal years 1995 to 1998".

Approved November 2, 1994

Section 6. Sewage requirements in Monroe County.—

(1) The provisions of this section apply to all sewage treatment, reuse, and disposal facilities and all onsite sewage treatment and disposal systems in Monroe County, except as provided in subsection (8):

(2) No new or expanded discharges shall be allowed into surface waters.

(3) Existing surface water discharges shall be eliminated before July 1, 2006.

(4) Existing sewage facilities that discharge to other than surface waters and existing onsite sewage treatment and disposal systems shall cease discharge or shall comply with the applicable treatment requirements of subsection (6) by July 1, 2010, and with the rules of the Department of Environmental Protection or the Department of Health, as applicable.

(5) All new or expanded discharges into other than surface waters and all onsite sewage treatment and disposal systems permitted after the effective date of this act shall comply with the requirements of subsection (6) and with the rules of the Department of Environmental Protection or the Department of Health, as applicable.

(6)(a) Sewage facilities with design capacities greater than or equal to 100,000 gallons per day that do not discharge to surface waters shall provide basic disinfection as defined by Department of Environmental Protection rule and the level of treatment that will produce an effluent that contains not more, on a permitted annual average basis, than the following concentrations:

1. Biochemical Oxygen Demand (CBOD5) of 5 mg/l.
2. Suspended Solids of 5 mg/l.
3. Total Nitrogen, expressed as N, of 3 mg/l.
4. Total Phosphorus, expressed as P, of 1 mg/l.

(b) Sewage facilities with design capacities less than 100,000 gallons per day that do not discharge to surface waters shall provide basic disinfection as defined by Department of Environmental Protection rule and the level of treatment that will produce an effluent that contains not more, on a permitted annual average basis, than the following concentrations:

1. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
2. Suspended Solids of 10 mg/l.
3. Total Nitrogen, expressed as N, of 10 mg/l.
4. Total Phosphorus, expressed as P, of 1 mg/l.

(c) Onsite sewage treatment and disposal systems shall provide the level of treatment that will produce an effluent that contains not more, on a permitted annual average basis, than the following concentrations:

Mayor Di Gennaro

**RESOLUTION NO. 179 - 2008**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA DECLARING SUPPORT OF CONGRESSIONAL LEGISLATION TO EXCLUDE THE DEVELOPED RESIDENTIAL AREA OF THE UNRECORDED PLAT ON THE EAST END OF NO NAME KEY, OTHERWISE KNOWN AS "ISLAND'S END", LOCATED IN MONROE COUNTY, FLORIDA FROM THE FEDERAL COASTAL BARRIER RESOURCES SYSTEM.**

**WHEREAS**, the Florida Keys have been designated by the Legislature of the State of Florida as an Area of Critical State Concern requiring development and implementation of a comprehensive plan and land development regulations; and

**WHEREAS**, the Coastal Barrier Resource Protection Act (CBRA) was enacted by the Federal Government in 1982 to protect remaining natural coastal eco-systems from encroachment and development, creating the Coastal Barrier Resources System (CBRS); and

**WHEREAS**, coastal areas of the Florida Keys were added to the CBRS in the Coastal Barrier Improvements Act of 1990 (CBRA), which included the undeveloped areas of No Name Key; and

**WHEREAS**, the defining criteria of "undeveloped" for inclusion into the CBRS was refined in the 1990 CBRA to specify the density of development to be less than one home/structure per five acres of land; and

**WHEREAS**, at the time of the inclusion of the CBRA, the east end of No Name Key consisted of 5.28 acres of buildable land with nine (9) homes permitted and substantially complete (walled and roofed), approximately one home per .528 acres. Additionally, five (5) other property owners had previously received building permits and their homes were in various phases of active construction. Today, there are fourteen (14) homes on 5.28 acres; and

**WHEREAS**, in comparison, the west end of No Name Key in 1990, Bahia Shores and Dolphin Harbour subdivisions, consisted of approximately 15.4 buildable acres, and they had fourteen (14) homes permitted and substantially completed, at one home per 1.10 acres, and were excluded from the CBRA; and

**WHEREAS**, the west end of No Name Key, as a previously developed residential area with development well over the defined criteria of "undeveloped", was correctly excluded from the CBRS; but the east end of No Name Key, also a previously developed residential area with similar density of development was seemingly included in error; now, therefore;

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA that:**

1. The Board of County Commissioners hereby requests the Florida Delegation use the necessary legislative process within the U.S. House of Representatives to remove the developed residential area of the unrecorded plat on the east end of No Name Key, otherwise originally known as "Island's End", located in Monroe County, Florida from the Coastal Barrier Resource System.
2. The Board of County Commissioners expresses its support of the necessary congressional legislation to remove the developed residential area of the unrecorded plat on the east end of No Name Key, otherwise originally known as "Island's End", located in Monroe County, Florida from the Coastal Barrier Resource System.
3. The Clerk is hereby directed to forward copies of this resolution to Senator Bill Nelson and Senator Mel Martinez, U. S. Senate; Representative Ron Saunders, District 120; Senator Larcenia Bullard, District 39; Senator Bill Nelson; Senator Mel Martinez; Congresswoman Ileana Ros-Lehtinen, District 18; and Congressman Mario Diaz-Balart, District 25.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a meeting of said Board held on the 18<sup>th</sup> day of June, A.D. 2008.

|                      |            |
|----------------------|------------|
| Mayor Di Gennaro     | <u>Yes</u> |
| Mayor Pro Tem McCoy  | <u>Yes</u> |
| Commissioner Murphy  | <u>Yes</u> |
| Commissioner Neugent | <u>No</u>  |
| Commissioner Spehar  | <u>Yes</u> |

FILED FOR RECORD  
2008 JUN 23 PM 12:50  
DANNY L. KOLHAGE  
CLERK  
MONROE COUNTY, FLA.

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

BY: *Mario Diaz-Balart*  
Mayor



DANNY L. KOLHAGE, CLERK  
BY: *Jamie Hancock*  
Deputy Clerk

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM

*Suzanne A. Hutton*  
SUZANNE A. HUTTON  
COUNTY ATTORNEY

